Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2009

JAMES CONSTANT

Petitioner,

v.

Superior Court of the State of California, County of San Bernardino, S-35, Case No. SCVSS 096961

Court of Appeal of the State of California, 4th District Div 2 Consolidated Cases EO44802 and EO45320

Supreme Court of California Case S173448

THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and Through the Department of Transportation, Real Party in Interest

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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QUESTIONS PRESENTED

1. The Fifth Amendment, as incorporated to the states, requires that valuation and payment, with adjustments for rapid increases in property values and delays in payment, are made before taking of private property by government. Pursuant to its quick action laws, the State of California condemned private property without making valuation, payment and adjustments before taking private property. Do California's quick action laws deprive property owners of their 5th Amendment right for just compensation?

2. The Fourteenth Amendment requires a valid policy reason for the disparity between the State and private owner litigants. California's quick action laws allow immediate possession of private property by the State and protracted litigation burden for the property owner. Do California's quick action laws deprive property owners of their 14th Amendment right for equal treatment?

3, The Fifth Amendment, as incorporated to the states, requires that owners cannot have property taken without the opportunity to conduct pre deprivation discovery necessary for the preparation of their defense to the taking. Pursuant to its quick action laws, the State of California condemned private property without affording owners the opportunity to conduct pre deprivation discovery necessary for the preparation of their defense to the taking. Do California's quick action laws deprive property owners of their 5th Amendment right for due process?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

Petitioner James Constant, in propria persona, respectfully prays that a writ of certiorari issue to review the California Supreme Court's decision denying petitioner's Petition for Review and Motion to Dismiss Case in that court, and lower court decisions.

OPINIONS BELOW

The California Supreme Court's decision denying petitioner's Petition for Review and Motion to Dismiss Case in that court filed 7/22/09, and lower court decisions, appear in the APPENDIX to this Petition.

JURISDICTION

The California Supreme Court's decision in this matter was final on 8/22/09. This Court's jurisdiction is invoked under Title 28 USC 1257.

STATUTORY PROVISIONS INVOLVED

5th and **14th Amendments** to the United States Constitution. **Article I, section 19** of the California Constitution is set forth on page 11 of this petition. California **Code of Civil Procedure §1263.110** *et seq.*

STATEMENT OF THE CASE

This is an eminent domain action in which plaintiff The People of the State of California, acting by and through the California Department of Transportation ("State"), condemned certain real property owned by defendants James and Robert Constant[1] in a "quick take" action pursuant to **Code of Civil Procedure ("C.C.P") §1263.110.**[2] The State took possession of the property on 11/19/02 and filed a Notice of Deposit on 11/20/02. Money was deposited with the State Treasurer. As required by California's Constitution, no deposit was made in court and no prompt release of payment to appellant was made by the State. (Clerk's Transcript "CT" 748).

In 2007, the jury made an award substantially greater than the quick take deposit in 2002(CT 628). Post verdict motions were filed. The trial court denied petitioner's Motion for a New Trial and, having determined that petitioner was not qualified to testify as an expert(CT 606,611), granted the State's Motion for Judgment Notwithstanding the Verdict ("JON")CT 636) on grounds the jury did not follow Instruction **CACI 3515** awarding petitioner half the JON award "for his half interest" in the property(App 48,53), in effect, sharing the award with the State. Petitioner filed a Motion to Dismiss Case for failure to pay which was denied by the trial court (App 45).

The court of appeal reversed the judgment in Case E046012 (costs) and affirmed the judgments in consolidated Cases E044802 (merits and constitutional claims) and E045320 (constitutional

[1] Robert Constant having filed a settlement of his claim with the State before trial was dismissed from this action. App 38

[2] All further statutory references are to California's Code of Civil Procedure unless otherwise indicated

claim).(App 44). A Petition for Rehearing was denied. The California Supreme Court denied petitioner's Petition for Review and Motion to Dismiss Case without opinion(App 23,25). The courts below refused to hear petitioner's constitutional claims and made all decisions depend on state statutory provisions(App 37).

Petitioner contends the decisions below are repugnant to the California and Federal Constitutions because they condemn private property without making valuation, payment, and adjustments for rapid increases in land values before taking private property, because without a valid policy reason they create a disparity between the State and property owners (take now pay later after protracted litigation), and because they do not provide pre deprivation discovery that would enable owners to prepare their defenses to the taking.

QUESTION 1 presented is a **5th Amendment** question (taking and compensation). The **5th Amendment** requires valuation and payment before taking private property, and adjustments for rapid increases in land values and delay in payment.

There are two parts of **Cal. Const. Art. 1, §19**. The first part conforms with the **5th Amendment** and the second part authorizes "quick action" for taking private property upon deposit in court and prompt release to the owner of money determined by the court to be the probable compensation by a jury.

In the trial and appeal courts, petitioner contends that quick action is unconstitutional because it fails the **5th**

Amendment requirements and fails the prompt payment "quick action" part of **Cal. Const. Art. 1, §19**.

No Pre Deprivation Valuation And Payment

In appeal Case E044802 the trial court had determined that the taking was valid(CT 84,362) and that the date of value was 11/20/02(CT 388). There was no pre deprivation valuation(CT 143) and no payment to owners (to this date). The trial court had denied defendant's motions in Limine ("ML"). In ML 7 (CT 117 taking property without pre deprivation payment), the trial court ruled "The issues of probable compensation and deposit, and the setting of the date of valuation have been previously adjudicated and the correct amounts and dates have been set"(CT 599) and, in ML 11 (CT 143,424 taking property without pre deprivation valuation), the trial court ruled that "the validity of the take has already been adjudicated"(CT 446).

At trial, the trial court had precluded defendant's testimony and evidence ruling defendant may offer no valuation opinions as those would require expert presentation(CT 599,605,610,618).

In appeal Case E045320 the trial court had denied Appellant's Motion to Dismiss the Eminent Domain Proceeding Pursuant to **C.C.P. 1268.020(b)** and **Cal. Const. Art 1 19**, for lack of constitutional taking and lack of constitutional payment. Petitioner argued that failure to pay requires dismissing case to effectuate purpose of eminent domain law. *See* Appellant's Opening Brief at page 6 and Reply at page 25 in Case E045320. The trial court had ruled that "The Court finds that the time requirements of **C.C.P §1268.010(A)** have not been triggered by a final judgment in this matter and thus, the requisites of **C.C.P §1268.020** cannot be established". (App 45)

The California Supreme Court denied petitioner's Motion to Dismiss Case without opinion(App 23). Petitioner argued that a constitutional taking and payment were not made. (App 25).

Thus, contrary to federal law and under color of State quick action laws, the courts below affirm that pre deprivation valuation and payment are not necessary for taking private property and just compensation.

No Adjustment For Rapid Land Increase

The trial court denied appellant's motions, ML 10 (CT 136,449), ML 15 (CT 170,456) requesting adjustment for rapid increase in property value, without specifying grounds(CT 599). However,

> "at the time a court decides a case, market valuation of the property is constitutionally compelled irrespective of what the statute required" **Redevelopment Agency v. Gilmore (1985) 38 Cal.3d 790, 796-797**

At trial there was no adjustment for rapid increase in land value. "rapid land value increases between the dates of taking and trial must be compensated for in order to provide just compensation" **Kirby Forest Industries, Inc. v. United States, 467 US 1,17 (1984).**

At the end of trial in 2007, petitioner could not purchase equivalent property with the trial court's award based on a 2002 date of value.[3] "The just compensation

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[3] The 50% JNOV award about $1.50/sf based on the 2002 date of

required by the Constitution is that which constitutes a full and perfect equivalent for the property taken". **Monongahela Navigation Co. v. United States, 148 US 312, 326 (1893).**

No Adjustment For Delay in Payment

The trial court granted the State's motion to reset the date of value on 11/20/02, the date of commencement of the action on grounds "under the **Mt San Jacinto** holding, the date of probable compensation is the date of valuation"(CT 388). There was, therefore, no adjustment for delay in payment. However, a "substantial delay between valuation and payment necessitates procedure for modifying award to reflect value at time of payment", **Kirby**, *supra. Dates of value notoriously deny just compensation. See* "Government Takings and Constitutional Guarantees: When Date of Valuation Statutes Deny Just Compensation," **2003 BYU L. Rev. 265.**

No Valid Policy Reason For Unequal Treatment of Litigants

QUESTION 2 presented is a **14th Amendment** question (equal treatment). The quick take action, authorized by the "quick action" part of **Cal. Const. Art. 1, §19**, creates disparity between litigants, immediate possession of private property by the State and protracted litigation by property owners (*See* 5 year Register of Actions CT 1-83). However, there is no valid policy reason for the disparity because quick action is unnecessary.

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value falls short of the $37/sf petitioner's final demand made in 2005 before trial (CT 460) and the current 2009 property value of $20/sf by the tax assessor.

> In 1996, the California Department of Transportation (the State) determined that the 1-210 freeway would be extended through Fontana. In November 2002, the State was authorized to take one and one-half acres of a five-acre parcel owned by defendant James. App 38

Since the State has been implementing the taking of property and starting its planning process back in 1996, it is difficult to see what the valid policy reason is for sudden hurry to obtain immediate possession by "quick action" in 2002.

In the trial and appeal courts, petitioner contends that the quick action process causes a disparity and deprives him of the equal protection provision of the Constitution. *See* Appellant's Opening Brief in Case 44802 at pages 15-18,43-45,46(par. 27),47,49(par. 2); Appellant's Opening Brief in Case E045320 at page 1; Appellant's Reply Brief in consolidated Cases E044802 and E045320 at pages 1,4(par. 2),11,15-18. The trial and appeal courts refused to hear appellant's constitutional claims. App 41

No Pre Deprivation Discovery

QUESTION 3 presented is a **5th Amendment** question (due process). California requires a pre deprivation hearing, without discovery, by a State or local Board. The Board issues a Resolution of Necessity(CT 990) which allows the State to quick take private property. Owner's due process rights are violated by the Resolution of Necessity because the State or local Board denies them the opportunity

to conduct pre deprivation discovery necessary for the preparation of their defense to the taking in the trial court.

Trial courts assume a valid taking of property by a valid Resolution of Necessity and assume the postdeprivation remedy of compensation satisfies due process. Here, the trial court held that "there was no gross abuse of discretion in the County's approval of the propriety to take"(CT 84). The trial court refused to take judicial notice of evidentiary data(CT 85) and Board transcripts(CT 254)**[4],** thus denying appellant a fair hearing and the right to testify and offer evidence. The trial court denied appellant's taking(CT 104,186),(CT 110,196) and Resolution of Necessity(CT 223) motions on grounds "subject matter of this motion has already been adjudicated at prior proceedings", namely, the trial court's earlier decision, on validity of the taking, at the hearing on 6/7/04(CT 84,362). Board transcripts were held "not relevant to the issue of value"(CT 599).

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[4] *See* transcript of Board Action Item 114 Agenda 11/19/02(CT 760) cited in Appellant's Opening Brief in Case E044802 at pages 4(CT 760),5(CT 196),6(CT 760,762,763, 764),14, 21,42(par. 17).

REASONS FOR GRANTING THE WRIT

The pay first and then take protections of the California and the U. S. Constitutions are dead in California. They have been replaced by a flawed "quick action" process which takes property first and pays for it later, pennies on the dollar, after all appeals have been exhausted. Under that non neutral process, just compensation is made to depend on State statutory provisions. Seven years ago, petitioner's property was taken without just compensation ascertained by a jury, as requested, without first been paid to or into court for the petitioner and without deposit in court and prompt release to petitioner of the probable amount the jury would later award, as required by the quick action part of California's Constitution.

The issues presented by this Petition are appropriate for review by this Court pursuant to the California and Federal Constitutions to settle important questions of eminent domain law in that they decide questions of first impression of the validity of State enacted quick action eminent domain law and further involve a conflict situation, between State statutory provisions and the United States Constitution, likely to be the subject of persistent litigation in the future. California's eminent domain law is repugnant to the United States Constitution and Federal law because it makes just compensation depend on non neutral State laws.

Federal law requires disregarding State authorities and statutory provisions used by the courts below which are in conflict with and are obstacles to the accomplishment and execution of the full purposes and objectives of eminent domain law. **Edgar v. Mite Corp. 457 US 624, 631 (1982).**

The purpose of eminent domain law is more than government making a token deposit and courts affirming *pro forma* under local laws. It involves valuation and payment before taking, adjustments for rapid land increases and delay in payment, adjudication by a jury when requested, and above all it requires neutral local procedural rules to taking and compensation claims. This purpose cannot be subordinate to State authorities and statutory provisions for taking private property. California courts offer no objective criteria for distinguishing between statutes that do and do not conflict with the constitutional requirements. Here, State statutory provisions are unconstitutional because they conflict with both State and Federal constitutions.

California's quick action process has deprived petitioner of his property, and of the just compensation, due process and equal treatment provisions of the State and Federal constitutions. Under both State and Federal constitutions, the valuation and payment of private property and its payment are preliminary to its taking by eminent domain. California's quick action process is inopposit, the taking of private property is preliminary to its valuation and payment. The quick action process affords the State a means of acquiring property immediately without a valid policy reason and affords the owner the burdensome right to protracted litigation with payment withheld until all appeals have been exhausted, all under color of State authorities and statutory provisions for taking private property in violation of constitutional requirements for due process, just compensation and equal treatment of litigants.

Certiorari should be granted for the reasons that the California Supreme Court has wrongly affirmed important questions of due process, just compensation and equal treatment

under non neutral State quick action laws which are repugnant to the United States Constitution and Federal laws.

Constitutional Questions Presented Are First Impression

Under the State Constitution, a taking occurs when compensation has first been paid to, or into court for the owner. Immediate "quick action" possession is authorized upon deposit in court and prompt release to the owner of money determined by the court to be the probable compensation by a jury.

> **Article I, section 19** of the California Constitution provides: "*Private property may be taken or damaged* for public use *only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.* The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings *upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.[the jury will award]"* (See also, **US Const., 5th Amend**. [private property shall not be taken for public use without just compensation]. *Italics added.* **Mt San Jacinto Community College Dist. v. Superior Court (2007), 40 Cal. App. 4th. Fn 1**

Thus, in a quick take action, **Art. 1, §19** of the State Constitution requires payment preliminary to taking. Here, a constitutional taking has not occurred because no money has been *first been paid to, or into court for the owner.* Immediate possession was made without *deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.[the jury will award].* Under the **5th Amendment**, a taking occurs when payment is made after trial. **Kirby Forest Industries Inc. v. United States (1984) 467 US 1, 17-18 (Kirby).** ("A constitutional taking occurs when the owner is finally paid after trial"). Here, no money has been paid to this date.

Under the **5th Amendment**, valuation is preliminary to actual taking.

> "The proceeding for the ascertainment of the value of the property and consequent compensation to be made, is merely an inquisition to establish a particular fact *as a preliminary to the actual taking;* and it may be prosecuted before commissioners or special boards or the courts, with or without the intervention of a jury, as the legislative power may designate" *Italics added.* **United States v. Jones, 109 U. S.513, 519 (1883).**

The Federal constitution also requires that "rapid land value increases between the dates of taking and trial must be compensated for in order to provide just compensation" and a "substantial delay between valuation and payment necessitates procedure for modifying award to reflect value at time of payment", **Kirby Forest Industries, Inc. v. United States, 467 US 1,17 (1984).**

Thus, under both State and Federal law, the valuation and payment of private property are preliminary to its taking by eminent domain, and rapid land increases and delay in valuation and payment require modifications to reflect value at time of payment. In California's quick action process, the taking of private property is preliminary to its valuation at trial and offers no rules for rapid land increases and delay in payments. The quick action process affords the State a means of acquiring property immediately and affords the owner the right to protracted litigation with payment withheld until all appeals have been exhausted, all under color of State authorities and statutory provisions for taking private property in violation of constitutional requirements for just compensation and equal treatment of litigants. **Nordlinger v. Hahn, 505 US 1 (1992)** ("equal treatment is violated absent a valid policy reason for the disparity between litigants").

Allowing just compensation to depend on State authorities and statutory provisions *ascertained by the trial court* would be unconstitutional because it gives the trial court powers to decide all issues of when a taking occurs, of vacating *just compensation ascertained by a jury* by JNOV verdict, and by withholding when payment is to be *first paid to, or into court, and prompt release to the owner of money*, all in violation of **Cal. Const. Art. 1, §19** which expressly confers these powers on a jury.

Local rules or procedures must not discriminate against the federal law or affect the availability of a federal right. **Davis v. Wechsler, 263 US 22,24 (1923).** Petitioner's just compensation cannot be made to depend the State's deposit or JNOV award based on State statutory provisions.

Seaboard Air Line Ry. v. US (1923) 261 US 299, 304. State and federal statutory provisions have been invalidated when necessary to ensure just compensation to the owner. **Kirby Forest Industries Inc. v. United States (1984) 467 US 1, 17 (Kirby)**

Objections to Appeal Court's Opinion

The Appeal Court's Opinion ("O") states that "The State deposited probable compensation as required for a quick take action" App 38. However, there was no deposit in court and prompt release to petitioner as required by **Cal. Const. Art. 1, §19**. The O also states that "Constant was awarded one-half of the verdict for one-half ownership of property" App 38**[5]**. However, just compensation is for taking not ownership of property.

The O cites **Aetna Life and Casualty Co. v. City of Los Angeles (1985) 170 Cal. App 3d 865,877** as approving the constitutionality of a jury instruction **CACI 3515**. App 41. However, the **Aetna** case at 876 clearly states "Our decision with regard to plaintiffs' recovery in inverse condemnation makes it unnecessary for us to discuss the propriety of the judgment notwithstanding the verdict . . ."**[6]**

Moreover

> "the only type of evidence which can be used to establish value is the opinion of qualified experts

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[5] QUESTION 4 When one owner settles before trial, does awarding one-half of the verdict for one-half ownership of property deprive the non settling owner's **5th Amendment** right for just compensation?

[6] QUESTION 5 Does a trial court's granting JNOV reducing the amount of the jury award deprive a property owner's **5th Amendment** right for just compensation?

> *and property owners*" *Italics added.* **Aetna 170 Cal. App. 3d 865, 877.**

Here, petitioner's testimony and evidence *as a property owner* were precluded. The trial court held that petitioner "may offer no valuation opinions as those would require expert presentation". (CT 606, 611). The O held that "the only expert's opinion on the value of the property" was the State's expert. App 38.[7] Denying a party the right to testify or to offer evidence is reversible *per se*. **Caldwell v. Caldwell 204 Cal.App.2d 819,821 (1962).**

The O states that "As to his claim that the quick-take statutory scheme violates the state and federal Constitution requirements that just compensation must be paid, these arguments were rejected in **Mt San Jacinto Community College Dist. v. Superior Court (2007), 40 Cal. App. 4th 659-661".** App 41. And, the O states that

> "The California Supreme Court has approved the quick-take process. Constant has failed to show that he will not receive just compensation due to the provisions of section 1268.010. As such, he cannot show that his constitutional rights are implicated.". App 43.

Thus, the O equates quick action **section 1268.010** *with the federal constitution.* In fact, the **Mt San Jacinto** case discussed two issues *under the quick action part of*

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[7] QUESTION 6 Does a trial court's precluding an owner from testifying and presenting evidence deprive the property owner of **5th Amendment** rights for due process and just compensation?

California's Constitution, neither of which reads on the federal questions which the courts below refused to hear.

> First, does a statutory property valuation date that occurs at the time the condemner deposits the probable compensation *in court under section 1263.110, et seq.* deny the property owner just compensation *under the California Constitution* when litigation in the eminent domain action is not expected to end until several years after the deposit is made? Second, is the owner' statutory waiver of rights after withdrawing the funds an unconstitutional condition on the statutorily required "release" of the deposit? *Italics added.*
>
> We conclude that the statutory date of valuation at the time the probable compensation is deposited is constitutional *[under the California Constitution]*, and that the requirement of a waiver of claims and defenses for receipt of deposited probable compensation is constitutional. *Parenthesis text added.* **Mt San Jacinto**, *supra.*

In short, the O attempts to incorporate California's flawed quick-take law into the **5th** and **14th Amendments**. Moreover, it does not discuss the constitutionality of (1) the propriety of the JNOV**[8]**, (2) the trial court's ruling that petitioner was not qualified to testify as an expert, and (3) the trial court's apportionment of the JNOV award between petitioner and the State.

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[8] Petitioner argued that JNOV is error because it fails the federal requirements set forth in **Reeves v. Sanders Plumbing Prods. Inc. 530 US 133 (2000)**

Federal Sovereignty is Implicated

The **5th** and **14th Amendments** are the strongest legal bulwarks of the Constitution. They prohibit government from condemning private property without making valuation, payment and adjustments before taking property and, absent valid policy reasons, they prohibit government from creating disparity between litigants, immediate possession of private property by government and protracted litigation by property owners delaying payment until all appeals are exhausted.

In the popular mind, as shown daily by letters to the editor of local newspapers, citizens believe that the Constitution guarantees their freedoms. But, State courts are most preoccupied with local rules and procedures. Petitioner need not illustrate the problem of State courts refusing to hear federal constitutional claims. As shown by Appendices, the State courts below refused to hear petitioner's constitutional claims under **Calif. Const. Art 1, §19, US Const. 5th** and **14th Amendments.** However, State courts must not decide merely according to the laws and Constitution of the State, but according to the "supreme law of the land". **Testa v. Katt, 330 US 386 (1947).** They are bound to give effect to the Federal laws and to disregard State law when there is a conflict. **Cooper v. Aaron, 358 US 1 (1958).** It violates the Supremacy Clause for a State court to refuse to hear a category of Federal claims when the court entertains State law actions of a similar nature. **Howlett v Rose, 496 US 356 (1990).**

Indeed., when state courts have looked under the hood at the constitutional aspects of the quick action procedure they have found related issues diminishing federal

sovereignty. In **Lemon v. Mississippi Transportation Commission, (Miss. 1999) 1999 WL 161328,** observing that "it is . . . [textbook] law that our state and federal constitutions prohibit laws which permit deprivation of property without prior notice or hearing," the state Supreme Court determined that even though the quick-take statute does provide for pre deprivation notice and a postdeprivation hearing, the ultimate issue is whether the postdeprivation remedy is enough to satisfy due process. It concluded that "in situations where the State feasibly can provide a pre deprivation hearing before taking property, it generally must do so regardless of the adequacy of a postdeprivation . . . remedy to compensate for the taking". In **Sapero v Baltimore, (Md 2007) 920 A.2d 1061** and **Baltimore v Valsamakis (Md 2007) 916 A.2d 324** the courts held that the owner's due process rights were violated by the quick take procedure because it denied them the opportunity to conduct discovery necessary for the preparation for their defense of the taking. The courts also noticed that the city had been taking its sweet time in implementing the taking of property and starting its planning process back in 1982. Since it proceeded in baronial leisure, it was difficult to see what the sudden hurry to obtain immediate possession was about once the condemnation was filed. The courts thought that behaving in this fashion suggested that the city was using the truncated quick-take procedure as a litigation tactic to gain an unfair advantage over the owners.

The **Lemon** case ruled that the owner could not have property taken without the opportunity for a pre deprivation hearing being guaranteed. The **Valsamakis** case ruled that the owners due process rights were violated by quick action because it denied them the opportunity to conduct pre deprivation discovery necessary for the preparation of their defense to the taking. In the

present case, the quick action denied owners the pre deprivation opportunity to conduct discovery necessary for the preparation of their defense to the taking.

Many jurisdictions today throughout the country have quick take statutes that presume the validity of the taking and that the postdeprivation compensation remedy is enough to satisfy due process, regardless of the adequacy of the postdeprivation remedy.[9]

Condemnation is an extreme example of government coercion. Its effects on property owners are severe, not only in the form of economic deprivation, but in emotional, psychological, and social terms as well. Condemnations that take the land of innocent citizens without affording them the opportunity to conduct pre deprivation discovery necessary to defend the taking of their property, immediate possession of private property by government and protracted litigation by property owners delaying payment until all appeals are exhausted, are fundamentally unfair. They threaten not only the legal standards established by the Constitution, but also the more abstract social values of citizenship and domestic tranquility. California's quick take procedure should not be allowed to become law of the land.

Only this Court can restore the **5th** and **14th Amendments** as effective constitutional limits on the abuse of government power. As noted above, the Court has repeatedly declared that courts must decide according to the

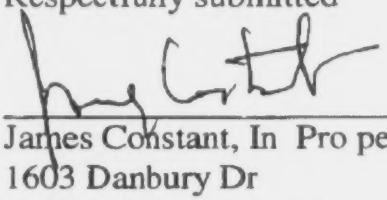
[9] A survey cited by the US Department of Transportation finds no state with pre deprivation discovery. *See* http// www.fhwa.dot.gov/realestate/aashto2006/emdomain.htm

"supreme law of the land". This Court should restore the Constitution's protections for private property not only to ensure that the law is followed as written, but also to ensure that citizens can trust in the security of their property, and in fair and equal treatment by the governments under which they live.

CONCLUSION

The Petition For Writ of Certiorari to The Supreme Court of California should be granted.

Dated: 7 September, 2009 Respectfully submitted

By: 

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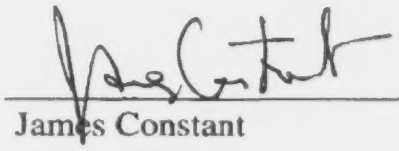
CERTIFICATE OF COMPLIANCE
WITH RULE 33 OF COURT

I certify that this brief contains 4,413 words (computer count) which is less than the 9,000 word limit.

Dated: 7 September, 2009

By: 

James Constant

Court of Appeal, Fourth Appellate District, Division Two - Nos. E044802/E045320/E046012

S173448

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE EX REL. DEPARTMENT OF TRANSPORTATION, Plaintiff and

Respondent,

v.

JAMES CONSTANT, Defendant and Appellant.

The motion to dismiss case is denied.
The petition for review is denied.

George, C.J., was absent and did not participate.

BAXTER
Acting Chief Justice

SUPREME COURT
FILED
JUL 22 2009
Frederick K. Ohlrich
Clerk

Supreme Court of California
350 McAllister Street
San Fransisco, CA 94102-4783

People v. State of California
Plaintiff and Respondent S173448

v. (Ct. App. Nos E044802,45320)
(Sup.Ct.No. SCV96961)

James Constant
Defendant and Appellant

MOTION TO DISMISS CASE AND
MEMORANDUM IN SUPPORT THEREOF

James Constant
1603 Danbury Dr, pro per
Claremont, CA 91711
909 624 1801
constantrcs@cs.com

MOTION TO DISMISS

Appellant moves this Court to dismiss this case (Court Appeal consolidated cases E044802 and E045320) on grounds, first, a constitutional taking was not made and, second, a constitutional payment was not made.

This motion is based upon the attached memorandum of points and authorities, and the files of record of this case, and such other and further evidence as may properly come before this Court at a hearing of this matter.

Pursuant to California Rules of Court, Appellate Rule 8.54, any showing in opposition to this motion shall be served and filed within 15 days after the service of the motion.

Dated: 7 July, 2009 Respectfully submitted

By: _____

James Constant, In Pro per

MEMORANDUM

Introduction

This is an eminent domain action in which plaintiff The People of the State of California, acting by and through the California Department of Transportation ("Caltrans" or "State"), seeks to condemn certain real property owned by defendants James and Robert Constant**[1]** in a quick take action pursuant to **Code of Civil Procedure ("C.C.P") §1263.110[2].** The State took possession of the property on 11/19/02 and filed a Notice of Deposit on 11/20/02. *See* Clerk's Transcript ("CT") 748. A jury trial was held and the courts below determined in favor of the State. No deposit was made in court and no prompt release of payment to appellant was made by the State.

The Proceedings Below

Appellant filed proposed jury instructions (100% damage, no benefits) (CT 180) and, on 6/18/07 because of a rapid increase in land value (CT 745), made a final demand for compensation of $4,112,114 for his ½ interest in the entire 5 acre property plus interest since 11/23/02 the date of possession (CT 460). The trial court refused appellant's jury instructions and adopted the State's jury instructions which called for damage and benefits to the remainder. Based on the 11/23/02 date of possession, the jury rendered its verdict in favor of appellant $547,707 = $390,756 for part taken +

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[1] Robert Constant having filed a settlement of his claim with the State before trial has been dismissed from this action.

$655,646 damage to remainder - $498,695 benefits to the remainder (CT 628). Post verdict motions were filed. The trial court denied appellant's Motion for a New Trial and granted the State's Motion for Judgment Notwithstanding the Verdict ("JON") awarding appellant half the JON award "for his half interest" in the property (CT 849). Appellant filed a Motion to Set Aside The Judgment which was denied by the trial court.

The court of appeal reversed the judgment in Case E046012 (costs) and affirmed the judgments in Cases E044802 (Non constitutional and constitutional claims) and E045320 (Motion to Dismiss under Section 1268.020). A Petition for Rehearing was denied. The decisions below make just compensation depend on state statutory provisions which appellant contends are error on merits and repugnant to the California and Federal Constitutions. *See* Petition for Review.

Legal Argument

A constitutional taking has not occurred.

Under the State Constitution, a taking occurs when compensation has first been paid to, or into court for the owner. Immediate possession is authorized upon deposit in court and prompt release to the owner of money determined by the court to be the probable compensation by a jury.

> **Article I, section 19** of the California Constitution provides: "*Private property may be taken or damaged* for public use *only when just compensation, ascertained by a jury unless waived, has first been paid to, or into*

> *court for, the owner.* The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings *upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.[the jury will award]"* (See also, **US Const., 5th Amend**. [private property shall not be taken for public use without just compensation]. *Italics added.* **Mt San Jacinto Community College Dist. v. Superior Court (2007), 40 Cal. App. 4th. fn 1**

Under the 5th Amendment, a taking occurs when payment is made after trial. **Kirby Forest Industries Inc. v. United States (1984) 467 US 1, 17-18 (Kirby)**. ("A constitutional taking occurs when the owner is finally paid after trial").

A constitutional payment was not made

Art. 1, §19 of the State Constitution requires payment into court and prompt release to the owner of probable compensation determined before trial before taking and, under the 5th Amendment, valuation is preliminary to actual taking.

> "The proceeding for the ascertainment of the value of the property and consequent compensation to be made, is merely an inquisition to establish a particular fact *as a preliminary to the actual taking;* and it may be

> prosecuted before commissioners or special boards or the courts, with or without the intervention of a jury, as the legislative power may designate" *Italics added.* **United States v. Jones, 109 U. S.513, 519 (1883).**

The Federal constitution also requires that "rapid land value increases between the dates of taking and trial must be compensated for in order to provide just compensation" and a "substantial delay between valuation and payment necessitates procedure for modifying award to reflect value at time of payment", **Kirby Forest Industries, Inc. v. United States, 467 US 1,17 (1984).**

Thus, under both State and Federal law, the valuation and payment of private property are preliminary to its taking by eminent domain, and rapid land increases and delay in valuation and payment require modifications to reflect value at time of payment. In California's quick action process, the taking of private property is preliminary to its valuation and payment and offers no rules for rapid land increases and delay in payments. The quick action process affords the State a means of acquiring property immediately and affords the owner the right to endless litigation with payment withheld until all appeals have been exhausted, all under color of state authorities and statutory provisions for taking private property in violation of constitutional requirements for just compensation and equal treatment of litigants. **Nordlinger v. Hahn, 505 US 1 (1992)**

("equal treatment is violated absent a valid policy reason for the disparity between litigants").

Allowing just compensation to depend on State authorities and statutory provisions *ascertained by the trial court* would be unconstitutional because it gives the trial court powers to decide all issues of when a taking occurs, of vacating *just compensation ascertained by a jury* by JON verdict, and by withholding when payment is to be *first paid to, or into court, and prompt release to the owner of money*, all in violation of **Cal. Const. Art. 1, §19** which expressly confers these powers on a jury. Local rules or procedures must not discriminate against the federal law or affect the availability of a federal right. **Davis v. Wechsler, 263 US 22,24 (1923).** Petitioner's just compensation cannot be made to depend the State's deposit or JON award based on State statutory provisions. **Seaboard Air Line Ry. v. US (1923) 261 US 299, 304.** State and federal statutory provisions have been invalidated when necessary to ensure just compensation to the owner. **Kirby Forest Industries Inc. v. United States (1984) 467 US 1, 17 (Kirby)**

Since no constitutional taking has occurred and since no constitutional payment was made, the Court should dismiss the case. A proposed order is attached.

Dated: 7 July, 2009 Respectfully submitted

By: _____

James Constant, In Pro per
1603 Danbury Dr
Claremont, CA 91711

Supreme Court of California
350 McAllister Street
San Fransisco, CA 94102-4783

People v. State of California
Plaintiff and Respondent S173448

v. (Ct. App. Nos E044802,45320)
(Sup.Ct.No. SCV96961)

James Constant
Defendant and Appellant

[PROPOSED] ORDER
RE: MOTION TO DISMISS CASE

Based upon the motion, the memoranda of points and authorities filed in support thereof and opposition thereto, including all items and citations thereto, the Court hereby rules as follows:

THE MOTION IS GRANTED. The Court :

1. INVALIDATES state statutory provisions and DISMISSES consolidated Cases E044802 and E045320;

2. DECLARES that the quick action process deprives appellant of the just compensation provisions of the Federal and State Constitutions and of the equal treatment provision of the Constitution;

3. DECLARES that under California's Constitution the trial court lacks power to decide all issues of just compensation;

4. DECLARES that appellant James Constant is the sole remaining owner with 100% interest in the subject property and claimant for the payment of just compensation for the taking by State of the subject property;

5. ORDERS the State of California to reinstate the subject property to its prior condition, no later than three (3) months from the date of this order;

6. ORDERS the State of California to pay appellant annual interest of 10% x $8,224,228 = $822,422 for his 100% interest in the entire 5 acre property (100% damage, no benefits), as just compensation and damages for the temporary taking of the subject property between 11/20/02, the date of commencement of the action, and the date the property reverts to its prior condition;

7. ORDERS State of California to pay appellant's claims of mandated statutory costs in the trial and appeal courts;

8. ORDERS State of California to pay appellant's attorney's fees, if any, in the trial and appeal courts; and

9. ORDERS a monetary sanction of $ _____ pursuant to C.C.P. §128.7(d) "for violation of subdivision (b) . . . sufficient to deter repetition of this conduct [by State] or comparable conduct by others similarly situated".

This court retains jurisdiction over all matters in this order until the State of California files a letter of satisfaction duly executed by appellant.

DATED _____

_____

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court rule 8. 1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT DIVISION TWO

Filed May 13 2009

THE PEOPLE ex rel. DEPARTMENT OF TRANSPORTATION,

Plaintiff and Respondent,

E044802, E045320, E046012
(Super.Ct.No. SCV5S096961)
OPINION

v.

JAMES CONSTANT,

Defendant and Appellant.

APPEAL from the Superior Court of San Bernardino County. Christopher J. Warner, Judge. Affirmed in part and reversed in part with directions.

James Constant, in pro. per., for Defendant and Appellant.

Bruce A. Behrens, Linda Cohen Harrel, Eric J. Fleetwood, and Robert W. Vidor, for Plaintiff and Respondent.

In 1996, the California Department of Transportation (the State) determined that the 1-2 10 freeway would be extended through Fontana. In November 2002, the State was authorized to take one and one-half acres of a five-acre parcel owned by defendant James

1

Constant (Constant), and his brother Robert Constant (Robert), which was located in Fontana. The State also was granted a temporary construction easement to construct the resulting frontage road that would cross the property. The State deposited probable compensation as required for a quick-take action, and in 2004, the trial court determined in a bifurcated proceeding that the taking of the property was proper.

A jury trial on compensation was set. Just prior to trial, Robert settled with the State. Constant represented himself at trial, as he does on appeal. The jury award on the fair market value of the property taken exceeded the only expert's opinion on the value of the property, so the trial court granted the State's judgment notwithstanding the verdict (JON), reducing the amount of the jury award. Constant was awarded one-half of the verdict for one-half ownership of the property.

Constant filed three separate appeals, case Nos. E044802, E045320, and E046012, which we have

consolidated into the instant appeal. Constant claims in the three appeals:[1]

2

1. The trial court erred in granting the State's right to take and by denying Constant's MIL (motion or motions in limine) Nos. 3, 5, and 16 in regard to the taking.

2. The trial court made numerous errors as to compensation issues, including resetting the date of value of the property on the State's motion, excluding Constant's evidence of increasing land values, and allowing the State to introduce benefits evidence in regard to severance damages and enhancements.

3. The trial court made numerous errors during trial by allowing the State's appraiser to testify when the appraiser's evidence was not credible and by precluding Constant's own testimony on value.

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[1] Constant's opening brief in case No. E044802 is bordering on indecipherable. The State's brief provides little or no assistance to this court in determining the issues raised by Constant and the proper resolution. Accordingly, we will consider Constant's claims on appeal to be those set forth on pages *35* through 47 of his opening brief, which he himself designates as the issues he is raising on appeal. If in fact there are other issues being raised in the brief, he has failed to meet his burden of presenting this court with those issues in an understandable manner. Constant also provides further argument in his reply brief on issues he made in the opening brief. We will not review any new claims or arguments that Constant raises for the first time in the reply brief. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th *754*, 764.)

4. The trial court erroneously granted the State's JON.

5. The trial court erred by denying Constant's motion for new trial and motion to set aside the judgment and by awarding him only one-half of the judgment.

6. State statutory provisions allowing quick-take actions should be ignored because they violate the United States Constitution and Article 1, section 19 of the California Constitution.

7. In case No. E045320, the trial court's denial of Constant's motion to dismiss for the State's failure to pay by the judgment was erroneous.

8. In case No. E046012, Constant is entitled to his statutory costs incurred in the lower court pursuant to Code of Civil Procedure sections 1268.710 and 1268.720.[2]

3

We agree with Constant that he was entitled to some costs pursuant to sections 1268.710 and 1268.720, and the trial court erred by denying costs by relying upon section 1250.410. Accordingly, we reverse the trial court's ruling denying any costs to Constant and remand to the lower court for a determination of the appropriate costs. We otherwise affirm.

4

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[2] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

**********pages 4-38 omitted**********
*******Non constitutional claims*******

VIII
CONSTITUTIONAL CLAIMS

It appears that Constant's final claims in case No. E044802 are that the quick-take process violates the state and federal Constitutions and that, since just compensation must be determined by a jury and since the trial court entered a JON, there was no proper determination of compensation.

Once again, Constant fails to provide any legal authority to support his claims. Although he provides further argument on these issues in the reply brief, we cannot consider arguments made for the first time in the reply brief. *(Reichardt v. Hoffman, supra,* 52 Cal.App.4th at p. 764.)

As to his claim that the quick-take action statutory scheme violates the state and federal Constitutions requirement that just compensation must be paid, these arguments were rejected in *Mt. San Jacinto.* (See *Mt. San Jacinto, supra,* 40 Cal.4th at pp. 659-661.) Further, as to the argument that a jury must decide issues of just compensation, the determination by the trial court based on the only fair market value presented was clearly supported by the evidence and does not violate Constant's constitutional rights to just compensation for property taken. This procedure was approved in *Aetna. (Aetna, supra,* 170 Cal.App.3d at p. 878.) We reject Constant's constitutional claims.

IX
MOTION TO DISMISS UNDER SECTION 1268.020, SUBDIVISION (B)(2)

In case No. E045320, Constant claims, "Under the facts of this case does the California Constitution require disregarding state statutory provisions and to dismiss the case to effectuate the purpose of the eminent domain law?"

A. *Additional Factual and Procedural Background*

On January 28, 2008, Constant filed his motion to dismiss the eminent domain proceedings pursuant to section 1268.020, subdivision (b)(2) and California Constitution, article 1, section 19. He contended that the State had failed to pay the judgment in the time required, and therefore section 1268.010 required dismissal of the eminent domain proceedings. The State opposed on the ground that Constant had filed an appeal, and therefore the judgment was not final. Further, Constant had refused to provide taxpayer identification information. Constant argued in his reply that he could appeal and receive compensation; otherwise section 1268.010 violated his federal constitutional rights.

A hearing on the motion was heard on March 5, 2008, but no transcript was included in the record on appeal. According to the minute order, the trial court concluded that "the time requirements of CCP 1268.010(A) have not been triggered by a final judgment in this matter and thus, the requisites of CCP 1268.020 cannot be established." (Capitalization omitted.)

B. *Analysis*

Section 1268.0 10, subdivision (a) provides, "Not later than 30 days after final judgment, or 30 days after the conclusion of any other court proceedings, including any federal court proceedings, commenced by the defendant challenging the judgment or any of the condemnation proceedings, whichever date is later, the plaintiff shall pay the full amount required by the judgment." Section 1268.020, subdivision (b)(2) provides that the eminent domain action can be dismissed if the payment is not made.

Section 1235.120 defines "final judgment" as "a judgment with respect to which all possibility of direct attack by way of appeal, motion for a new trial, or motion under Section 663 to vacate the judgment has been exhausted."

Clearly, at the time that the motion was filed and notice regarding payment was given to the State, Constant had filed his appeal in case No. E044802. Hence, under the plain language of the statute, there was no final judgment to be paid.

Constant essentially claims that section 1268.010 is unconstitutional because he is entitled to just compensation, and such compensation should not be delayed by his challenging the judgment. Constant's entire argument is premised upon his belief that he. did not or will not receive just compensation. As stated, *ante*, we believe the JON was proper and reflected the fair market value of the property. The State already deposited $187,000 of probable compensation. The deposit earns statutory interest until it is withdrawn. (§1268.310.) The California Supreme Court has approved of the quick-take process. *(Mt. San Jacin to, supra,* 40 Cal.4th at pp. 659-661.) Constant has failed to show that

he will not receive just compensation due to the provisions of section 1268.010. As such, he cannot show that his constitutional rights are implicated.

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**********pages 42-43 ommitted**********
**********(Cost claims)**********

DISPOSITION

We reverse the trial court's order denying costs to Constant. We remand for the sole purpose for the trial court to determine the appropriate costs incurred at trial to be awarded Constant pursuant to sections 1268.710 and 1268.720. We otherwise affirm the judgment. Constant shall recover his costs on appeal pursuant to Code of Civil procedure section 1268.720.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI

We concur:

RAMIREZ

HOLLENHORST

MINUTE ORDER

Case SCVSS96961 - THE PEOPLE OF THE STATE -V- CONSTANT

MOTION RE: TO DISMISS THE EMINENT DOMAIN PROCEEDING FILED BY DEFENDANT JAMES CONSTANT
03/05/2008 - 8:30 AM DEPT. S35

JUDGE: CHRISTOPHER J. WARNER

CLERK: GAIL ANDERSON

COURT REPORTER CRAIG ANDERSON

COURT ATTENDANT ROBERT BRUCATO

ATTORNEY INFORMATION

ATTORNEY E. FLEETWOOD PRESENT FOR PLAINTIFF/PETITIONER.

DEFENDANT, JAMES CONSTANT PRESENT IN PRO PER.

PROCEEDINGS:

JAMES CONSTANT'S MOTION TO DISMISS THE EMINENT DOMAIN PROCEEDINGS IS HEARD. ARGUED BY COUNSEL AND SUBMITTED.

JAMES CONSTANTS MOTION TO DISMISS THE EMINENT DOMAIN PROCEEDINGS IS DENIED. WITHOUT PREJUDICE

THE COURT FINDS THAT THE TIME REQUIREMENTS OF CCP 1268.01 0(A) HAVE NOT BEEN TRIGGERED BY A FINAL JUDGMENT IN THIS MATTER AND THUS, THE REQUISITES OF CCP 1268.020 CANNOT BE ESTABLISHED.

NOTICE WAIVED.
MINUTE ORDER END

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
Civil Division - Dept S35
303 Wst Third St
San Bernardino, CA 92415

FILED
Oct 26 2007

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT

THE PEOPLE OF THE STATE OF
Case No. SCVSS 096961
CALIFORNIA, acting by and through the
Department of Transportation,

RULING ON SUBMITTED MATTER MOTION FOR NEW TRIAL

Plaintiff,

v.

JAMES CONSTANT;ROBERT N. CONSTANT; ARGEREY CONSTANT; ATHENA CONSTANT; NICHOLAS CONSTANT; DOE ONE to DOE TWENTY, Inclusive

Defendants

1. Motion for New Trial brought by Defendant James Constant is denied.

2. Motion for Judgment Notwithstanding Verdict by plaintiff pursuant to C.C.P. 629 is granted. Judgment is ordered entered in favor of defendant James Constant in the amount of $97,094.50 plus costs of $220.00. The jury verdict in this matter is against the law (CACI 3515; Aetna Life and Casualty Company vs. City of Los Angeles (1985) 170 CA 3(d) 865). The verdict far exceeded the "ceiling" for recovery set by the testimony of plaintiffs valuation expert, Warren H. Neville. (See Marshall vs. Department of Water and Power (1990) 219 Cal App 3rd 1124,1145-1146). Defendant did not present valuation testimony, although he could have, notwithstanding the court's grant of motions in limine precluding the testimony of defendant James Constant. Robert Constant, co-owner of the property, had retained a valuation expert as to the property and that expert was deposed by plaintiff. That expert could have been called by James, but was not. The only valuation testimony was given by Neville. A verdict exceeding the amount of Neville's opinion is therefore impermissible. The jury apparently performed its own appraisal, which it may not do.

Neville's opinion of value, including a temporary construction easement, was in the net amount of $194,189.00. The court finds that James Constant is entitled to half that amount for his 50% interest. The court therefore orders judgment in the amount of 10 $ 97,064.50 for James Constant, plus costs of suit, pursuant to a timely filed cost bill and subject to motion to tax.

Dated this 26 day of October, 2007

Christopher J. Warner
Judge of the Superior Court

FILED-Central District
SUPERIOR COURT
SAN BERNA1DINO COUNTY
OCT 26 2007

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the Department of Transportation,

Plaintiff,

-vs-

JAMES CONSTANT; ROBERT N. CONSTANT, ARGEREY CONSTANT; ATHENA CONSTANT; NICHOLAS CONSTANT; DOE ONE to DOE TWENTY Inclusive,

Defendants.

No. SCVSS 096961
Parcel 18488 -1, -2.
Case filed: November 20, 2002
Assigned For All Purposes To:
Honorable Judge Chnstopher J. Warner
Department S-35

TRIAL: August 14, 2007
TIME: 9:30 A.M.
DEPT: S-35

INTERLOCUTORY JUDGMENT IN CONDEMNATION AS TO DEFENDANT JAMES CONSTANT BY PLAINTIFF STATE OF CALIFORNIA

This proceeding for the condemnation for State highway purposes of the real property situated in the County of San Bernardino, State of California, and more particularly described in plaintiffs complaint on file herein as Parcels 18488-1 and 1.8488-2, came on regularly for trial on August 14, 2007, in Department S-35 of the above-entitled court, before the Honorable Christopher J. Warner, Judge of the Superior Court, and a jury sworn to try the issue of

compensation.

Eric J. Fleetwood and Raymond Barrera appeared as attorneys for plaintiff, and defendant James Constant appeared in pro persona.

Evidence was introduced on the issues, the cause was argued by counsel and defendant, and the jury was instructed by the court; whereupon the jury retired and deliberated and subsequently returned to court and rendered its verdict. Subsequently, plaintiff State of California filed its 'Motion for Judgment Notwithstanding the Verdict.

The court grants the State's Motion for Judgment Notwithstanding the Verdict, and upon the evidence and the entire proceedings, and GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:

1. The verdict returned by the jury on August 23, 2007, is contrary to law, and unsupported by the evidence. The amount of the just compensation awarded to defendant James Constant for ,the acquisition of his one-half interest in Parcels 18488-1 and 18488-2 is $97,094.50. This amount, together with prejudgment interest, calculated at the Surplus Money Investment Fund rate, pursuant to Code of Civil Procedure sections 1268.310 and 1268.350, shall be paid in to court for the benefit of defendant James Constant. Interest shall be calculated on the amount of $97,094.50 from December 13, 2002, the date of possession, until paid.

2. Upon payment of the said total sum into court for the benefit of defendant James Constant, said parcel shall be condemned to plaintiff and as against defendant James Constant for state highway purposes, in fee simple absolute, unless a• lesser estate is described, and all interests of said defendants in and to said parcel shall be terminated.

3. The payment into court of said total sum of money as herein above specified, shall be in full payment for said parcels and for damages of every kind and nature suffered or to be suffered by reason of the acquisition of said parcels and the construction and use of the project in the manner proposed by plaintiff.

4. The purpose for which said parcel is sought to be condemned is a public use authorized by law, and the taking of said parcel is necessary for such public use.

5. Defendant. James Constant is entitled to compensation for the acquisition of his one-half interest in Parcels 18488-1 and 18488-2 as specified in the Interlocutory Judgment in Condemnation As To Robert Constant. Defendants Athena Constant, and Nicholas Constant, having disclaimed on February 6, 2003, any and all rights to the real property described in plaintiffs complaint are not entitled to any compensation herein or further compensation. Defendant Argerey Constant, having disclaimed on September 9 2007, any and all rights to the real property described in plaintiffs complaint are not entitled to any compensation herein or further compensation.

6. Possession having been taken by plaintiff on December 13, 2002, all taxes, penalties and costs which are a lien on said parcel and which are apportioned to that portion of the fiscal year after said date are hereby canceled pursuant to Section 5081 et seq. of the Revenue and Taxation Code.

7.. Defendant James Constant has and does recover of and from plaintiff its costs of suit incurred herein, in the sum of $220.00.

DATED: October 26, 2007

Honorable Christopher J. Warner
JUDGE F THE SUPERIOR COURT